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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

- - - - - x  
In re: : Chapter 11  
:  
CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
:  
Debtors. : Jointly Administered  
- - - - - x

**DEBTORS' MOTION FOR ORDER UNDER 11 U.S.C. §§ 105 AND 363,  
AND FED. R. BANKR. P. 2002, 9006, AND 9019 AUTHORIZING THE  
ESTABLISHMENT OF PROCEDURES TO SETTLE CERTAIN PRE-PETITION  
AND POST-PETITION CLAIMS AND CAUSES OF ACTION WITHOUT  
FURTHER COURT APPROVAL**

The above-captioned debtors and debtors in possession in the above-captioned jointly administered cases (the "Debtors")<sup>1</sup> hereby move (the "Motion"), pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 9006, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing the establishment of procedures to settle certain pre-petition and post-petition claims and causes of action, all as more fully set forth herein, without further Court approval. In support of the Motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, VA 23060.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105 and 363 and Bankruptcy Rules 2002, 9006, and 9019.

### **BACKGROUND**

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors have continued debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. On January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of on or about March 8, 2009, the going out of business sales concluded.

**RELIEF REQUESTED**

7. By this Motion, the Debtors seek entry of an order in the form attached hereto (the "Settlement Procedures Order") authorizing and approving the procedures outlined below to allow the Debtors to compromise and settle pre-petition and post-petition (1) proofs of claim and administrative expense claim requests, and (2) existing, pending, threatened or contemplated claims, litigation, and causes of action of the Debtors against third parties in these chapter 11 cases without further court approval (collectively, the "Settlement Procedures").

**BASIS FOR RELIEF**

8. Prior to the commencement of these cases, the Debtors maintained, in the ordinary course of business, books and records (the "Books and Records") that reflected, among other things, the Debtors' liabilities and the amounts thereof owed to their creditors. Based on the Debtors' Books and Records, the Debtors assembled and filed with the Court their Schedules of Assets and Liabilities and Statements of Financial Affairs on December 19, 2008 (Docket Nos. 10-16 and 1130-1131), and their Amendment to Schedules of Assets and Liabilities (Docket No. 2231) on February 18, 2009 (collectively, the "Schedules and Statements").

9. By orders entered on December 11, 2008 and May 15, 2009 (the "Bar Date Orders"), this Court set (a) January 30, 2009 at 5:00 p.m. (prevailing Pacific time) as the deadline by which proofs of claim were required to be filed by non-governmental units against the Debtors (D.I. 890), (b) May 11, 2009 at 5:00 p.m. (prevailing Pacific time) as the deadline by which governmental units were required to file proofs of claim against the Debtors (D.I. 890), and (c) June 30, 2009 at

5:00 p.m. (prevailing Pacific time) as the deadline by which administrative expense claims were required to be filed against the Debtors (D.I. 3354) (collectively, the "Bar Dates").

**A. The Disputed Claims and Cause of Action and Receivables Claims.**

10. In accordance with the Bar Date Orders, written notice of the Bar Dates was mailed to, among others, all creditors listed on the Schedules and Statements. As of the date of this Motion, in excess of 13,000 proofs of claim and numerous administrative expense claim requests (collectively, the "Disputed Claims") have been filed by various parties (each a "Claimant") against the Debtors. The Debtors are currently in the process of reviewing and reconciling such claims against their Books and Records and Schedules and Statements.

11. The Debtors are also engaged in the process of analyzing claims and causes of action against and other disputes with third parties, as well as reviewing, reconciling, and collecting receivables (the "Cause of Action and Receivable Claims" and together with the Dis-

puted Claims, the "Settlement Claims"). Such Cause of Action and Receivable Claims include, without limitation, potential avoidance actions existing under Chapter 5 of the Bankruptcy Code, contract disputes, and credits, chargebacks, and other accounts receivable arising and accruing pre- and post-petition.

12. Before the commencement of these cases, the Debtors, in the ordinary course of their businesses, with the assistance of in-house and outside counsel, investigated, evaluated, and attempted to resolve disputes similar in nature to the Settlement Claims. Depending upon the fact specific circumstances and the inherent risks involved in litigating the various claims, the Debtors, in the exercise of their business judgment, made appropriate offers to settle such claims. The Debtors seek authority to implement similar procedures to compromise and settle the Settlement Claims throughout the remainder of these cases.

13. Absent the relief requested in this Motion, the Debtors would be required to seek Court approval to settle and compromise each individual Settlement Claim. The Debtors contend that filing individual

pleadings, sending notice of each proposed settlement to every creditor and interested party entitled to receive notice in these cases, and holding individual hearings would be an expensive, cumbersome, and highly inefficient way to resolve the Settlement Claims.

14. Accordingly, the Debtors propose to implement certain guidelines and Settlement Procedures with respect to the compromise and settlement of the Disputed Claims asserted against the Debtors and the Cause of Action and Receivable Claims asserted by the Debtors against third parties (each a "Settlement"). If such Settlement Procedures are authorized, the Debtors' bankruptcy estates will be spared significant expense and delay attendant to resolving such Settlement Claims. Moreover, the Settlement Procedures will preserve an oversight function for key parties in interest to monitor and receive notice of any settlement of a Disputed Claim reached between a Claimant and the Debtors and a Cause of Action and Receivable Claim settlement reached between the Debtors and a third party.

**B. The Notice Procedures.<sup>2</sup>**

15. As described more fully herein, the Debtors seek to implement limited notice procedures and a tiered settlement process with regard to the Disputed Claims filed in the Debtors' bankruptcy cases, as well as the Cause of Action and Receivable Claims of the Debtors against third parties.

16. The tiered settlement process is based upon (i) a mutually agreed upon settlement amount and (ii) the difference between the Debtors' reasonable estimate of a Settlement Claim (after commercially reasonable due diligence and investigation by the Debtors and their advisors) and the settlement amount.

17. The Debtors propose the following notice procedures (the "Notice Procedures"), applicable to all Settlement Claims, to provide key parties in interest with notice of each proposed Settlement.<sup>3</sup>

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<sup>2</sup> This section of the Motion is intended as a summary of the Notice Procedures set forth in the Order. Parties are strongly encouraged to review the Order in its entirety. In the event there is a discrepancy between the Motion and the Order, the Order shall control in all respects.

<sup>3</sup> In the event there is an inconsistency between the Motion and this Order, the Order shall control.

- (a) The Debtors will give written notice, by email or facsimile, if available, or overnight courier if email or facsimile are not available, of each proposed Settlement (the "Settlement Notice") to (i) the United States Trustee, (ii) counsel for the Committee of Unsecured Creditors, (iii) any party to the Settlement, and (iv) the Core Group and 2002 List (as defined in the Case Management Order) (collectively, the "Notice Parties").
- (b) The Settlement Notice (or the Settlement Agreement) will specify (i) the identity of the other party to the Settlement, (ii) a summary of the dispute with such other party, including a statement of the Debtors' reasonable estimate of the Settlement Claim amount and the basis for the controversy, (iii) an explanation of why the Settlement of such Settlement Claim is favorable to the Debtors, their estates, and their creditors, and (iv) a copy of the proposed settlement agreement ("Settlement Agreement").
- (c) The Notice Parties may object to or request additional time to evaluate the proposed Settlement in writing by no later than 5:00 p.m. (ET) (i) five (5) days for both Tier I Disputed Claims and Tier I Cause of Action and Receivable Claims or (ii) ten (10) days for both Tier II Disputed Claims and Tier II Cause of Action and Receivable Claims (each an individual "Notice Period") and serve such objection or request on counsel to the Debtors and counsel for the Committee of Unsecured Creditors on or before

the expiration of the applicable Notice. If the Debtors are compromising more than one Disputed Claim and/or Cause of Action and Receivable Claim, the Tier II Notice Period shall apply to such Settlement. If no objection or written request is filed and served upon counsel for the Debtors and counsel for the Committee of Unsecured Creditors or counsel to the Debtors and counsel for the Committee of Unsecured Creditors do not receive a written request for additional information and/or additional time prior to the expiration of the applicable Notice Period, the Debtors shall be authorized to enter into and consummate the Settlement Agreement without further order of the Court or any other action by the Debtors.

- (d) If a Notice Party provides a written request to counsel for the Debtors for additional information or additional time to evaluate the proposed Settlement, only such Notice Party shall have the later of (i) an additional five (5) days to object to the proposed Settlement or (ii) in the case of a request for additional information, three days after receipt by the Notice Party of the additional information requested. Each Notice Party may only make one request for additional time per Settlement Agreement, unless otherwise agreed to by the Debtors in their sole discretion.
- (e) If a Notice Party objects to the proposed Settlement within the defined Notice Period for that particular Tier of Disputed Claim or Cause of Action and Receivable Claim, (or the

additional period in the case of a Notice Party that has timely requested additional time or information to evaluate the proposed Settlement) (the "Objection Deadline") and the Debtors and such objecting Notice Party are unable to reach a consensual resolution, the Debtors will not take any further action to consummate the proposed settlement without first obtaining Court approval for that specific Settlement. The Debtors are authorized to schedule the Settlement for a hearing at the next scheduled omnibus hearing following the Objection Deadline (or any subsequent hearing) without filing a separate motion or other pleading.

- (f) If the Objection Deadline has passed and no objection has been filed with the Court or request for additional time or information has been received by the Debtors, the Debtors are authorized, but not directed, to file a "Certificate of No Objection" with the Court; provided, further, that each such Certificate shall set forth a statement that no objection was filed or received (or if any objection was filed or received, such objection has been resolved) and no request for additional time or information was received or, if such request was received, the additional period of review has expired.
- (g) An objection will be considered properly filed and served only if it is filed with the Court, and actually received by the following parties on or before the Objection Deadline: (i) Clerk of the Bankruptcy Court, United

States Bankruptcy Court, 701 East Broad Street - Room 4000, Richmond, VA 23219, (ii) the attorneys for the Debtors, (a) Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, P.O. Box 636, Wilmington, DE 19899, Attn: Gregg M. Galardi ([gregg.galardi@skadden.com](mailto:gregg.galardi@skadden.com)) and Ian S. Fredericks ([ian.fredericks@skadden.com](mailto:ian.fredericks@skadden.com)) and (b) McGuireWoods LLP, One James Center, 901 E. Cary Street, Richmond, VA 23219, Attn: Douglas M. Foley ([dfoley@mcguirewoods.com](mailto:dfoley@mcguirewoods.com)) and Daniel F. Blanks ([dblanks@mcguirewoods.com](mailto:dblanks@mcguirewoods.com)), and (iii)(a) Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 11th Floor, Los Angeles, California 90067-4100, Attn: Jeff Pomerantz ([jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)) and (b) 780 Third Avenue, 36th Floor, New York, NY 10017-2024, Attn: Robert Feinstein ([rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)).

- (h) All time periods set forth in the Notice Procedures shall be calculated in accordance with Bankruptcy Rule 9006.

18. The Notice Procedures are designed to afford parties a reasonable period of time to review a Settlement and do not materially alter the notice requirements provided for in Bankruptcy Rule 2002. Specifically, Bankruptcy Rule 2002 provides for 20 days notice of a settlement or compromise. Fed. R. Bankr. P. 2002(a)(3).

19. Under the Notice Procedures, for Tier I Disputed Claims and Cause of Action and Receivable Claims, parties in interest will have up to 10 days to review a Settlement, assuming the party makes a request for an additional five days. Under the Case Management Order, a party would typically have thirteen days to object. See Case Management Order, at (D.I. 130) (providing for an objection deadline of five (5) business day, i.e., seven calendar days, prior to the hearing for any motion filed 20 or more days prior to the hearing). Thus, the applicable period within which a party may object to a Settlement will only be shortened by three days under the Notice Procedures.

20. On the other hand, for Tier II Disputed Claims and Cause of Action and Receivable Claims, parties in interest will have up to 15 days to review a Settlement, assuming the party makes a request for an additional five days. Thus, under the Notice Procedures, the applicable period within which a party may object to a Settlement will actually be two days longer than provided for under the Case Management Order.

21. While providing party's with materially the same notice in respect of Tier I Settlement Claims and more notice in respect of Tier II Settlement Claims, the Notice Procedures provide the Debtors and their estates with significant cost savings benefits by obviating the need for a separate motion for each Settlement and service on all creditors.

22. Accordingly, the Notice Procedures are reasonable and should be approved.

**C. The Settlement Claims' Settlement Procedures.<sup>4</sup>**

23. Subject to the Notice Procedures outlined above, the Debtors propose the following tiered Settlement Procedures applicable to Disputed Claims:

- (a) Tier I With respect to Disputed Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with the Claimants that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Disputed Claims, grant any Claimant an allowed claim of an agreed upon priority or

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<sup>4</sup> This section of the Motion is intended as a summary of the Disputed Claims' Settlement Procedures set forth in the Order. Parties are strongly encouraged to review the Order in its entirety. In the event there is a discrepancy between the Motion and the Order, the Order shall control in all respects.

administrative expense claim, as applicable, in an amount not to exceed \$500,000.

- (b) Tier II With respect to Disputed Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with the Claimants that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Disputed Claims, grant any Claimant an allowed claim (priority or non-priority, as the case may be) or administrative expense claim, as applicable, in an amount greater than \$500,000.

24. To memorialize such Settlements, the Debtors have prepared a form Settlement Agreement in the substantially the form attached as Exhibit A to the Settlement Procedures Order. Pursuant to the Settlement Procedures Order, the Debtors would be authorized, but not directed, to utilize such Settlement Agreement for purposes of resolving Disputed Claims.

25. Additionally, the Debtors will provide written notice to Kurtzman Carson Consultants LLC ("KCC"), the Debtors' authorized claims and noticing agent, with respect to any proofs of claim that are settled pursuant to these Settlement Procedures. If appli-

cable, KCC would be authorized and directed to amend the claims register accordingly without further order of the Court.

**D. The Cause of Action and Receivables Claims' Settlement Procedures.<sup>5</sup>**

26. Subject to the Notice Procedures described above, the Debtors propose the following tiered Settlement Procedures applicable to the Cause of Action and Receivable Claims:

- (a) Tier I With respect to pre- and post-petition Cause of Action and Receivable Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with third parties that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Cause of Action and Receivable Claims, compromise or settle a Cause of Action and Receivable Claim resulting in a cash payment to the Debtors' estates of a value (i) equal to or greater than seventy-five percent (75%) of the Debtors' original reasonable estimate of the Cause of Action and Receivable Claim amount and (ii) equal to or less than \$1,000,000.

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<sup>5</sup> This section of the Motion is intended as a summary of the Cause of Action and Receivables Claims' Settlement Procedures set forth in the Order. Parties are strongly encouraged to review the Order in its entirety. In the event there is a discrepancy between the Motion and the Order, the Order shall control in all respects.

- (b) Tier II With respect to pre- and post-petition Cause of Action and Receivable Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with third parties that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Cause of Action and Receivable Claims, compromise or settle a Cause of Action and Receivable Claim resulting in a cash payment to the Debtors' estates of a value equal to (i) more than \$1,000,000 or (ii) less than seventy-five percent (75%) of the Debtors' original reasonable estimate of the Cause of Action and Receivable Claim amount.

27. To memorialize such Settlements, the Debtors have prepared a form Settlement Agreement in the substantially the form attached as Exhibit A to the Settlement Procedures Order. Pursuant to the Settlement Procedures Order, the Debtors would be authorized, but not directed, to utilize such Settlement Agreement for purposes of resolving Cause of Action and Receivable Claims.

**E. Creditors' Committee Reporting.**

28. To ensure the Creditors' Committee is involved in the process of resolving Disputed Claims and

Cause of Action and Receivable Claims, unless otherwise agreed to between the Debtors and the Creditors' Committee, the Debtors' advisors will provide weekly updates concerning ongoing settlement discussions to the Creditors' Committee's advisors. These updates will include, without limitation, non-privileged information mutually agreed to among the parties' advisors. Additionally, once the Debtors reach an agreement in principle with a third party, the Debtors will share the material terms of the Settlement with the Creditors' Committee's advisors. All information shared with the Creditors' Committee's advisors would be deemed shared subject to the existing confidentiality agreement with the Debtors.

29. In light of the foregoing, the Debtors believe that the proposed Settlement Procedures would maximize efficiency and value with regard to the Debtors' settlement of disputes, would better enable the Debtors to administer their estates, and are fair and reasonable under the circumstances. Accordingly, the Debtors submit that implementation of the Settlement Procedures is in the best interests of their estates, their creditors, and other parties-in-interest.

**APPLICABLE AUTHORITY**

**I. THE NOTICE AND SETTLEMENT PROCEDURES ARE FAIR AND REASONABLE UNDER THE CIRCUMSTANCES.**

30. In evaluating whether to approve the Settlement Procedures, this Court's analysis is guided by Bankruptcy Code sections 105 and 363, as well as Bankruptcy Rule 9019(b). Bankruptcy Code section 105 provides in pertinent part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under Bankruptcy Code section 363, a bankruptcy court is empowered to authorize a chapter 11 debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. See 11 U.S.C. § 363. In order to obtain approval for the use of estate assets outside the ordinary course of business, the debtor must articulate a valid business justification for the requested use. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1985).

31. Pursuant to Bankruptcy Rule 9019(b), the Court is empowered to approve procedures for the settlement of classes of controversy by a debtor-in-possession.

Specifically, a Court "[a]fter a hearing . . . the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice." Fed. R. Bankr. P. 9019(b). The rule merely requires that the proposed procedures be reasonable. In re Check Reporting Service, Inc., 137 B.R. 653 (Bankr. W.D. Mich. 1992).

32. Here, these standards have been satisfied because the Settlement Procedures are reasonable and appropriate based on the size and complexity of the Debtors' Chapter 11 cases and types of disputes the Debtors' seek to resolve. The Debtors' proposed Settlement Procedures will streamline the claims' resolution process and collection of amounts owed to the Debtors and their estates, thereby eliminating unnecessary expenditures of time and money with respect to the Settlement Claims.

33. Moreover, approval of the Settlement Procedures is in the best interest of the Debtors and their estates, and will not unduly prejudice the rights of creditors or other parties in interest. As set forth above, the Notice Procedures do not materially alter the

deadline by which a party in interest would be required to object to a Settlement. Moreover, seeking separate court approval to resolve numerous disputes that may arise in the context of the size Debtors' cases would be unduly burdensome on the Court and an unnecessary drain on the time and other resources of the Debtors and their professionals. In a case of this size and complexity, the expense of seeking Court approval for every Settlement might significantly reduce the benefits otherwise incident to many of the proposed Settlements. Thus, for the sake of both judicial efficiency and maximizing the Debtors' estates, implementation of the Settlement Procedures should be permitted.

34. Additionally, the Debtors submit that, pursuant to Bankruptcy Rule 2002(a)(3) and 9006, the cause exists to limit notice, as described above, of any Settlement entered into pursuant to the Settlement Procedures described herein. Limiting notice will enable the Debtors to promptly and efficiently enter into the Settlements contemplated by this Motion without unnecessary costs and expense to the Debtors' estates. Moreover, the rights of parties to object to any Settlement

are not materially different in the context of Tier I Settlement Claims and are more beneficial in the context of Tier II Settlement Claims.

35. Based on the foregoing, the Debtors submit that the request for approval of the Settlement Procedures is necessary and appropriate, is in the best interests of the Debtors, their estates and their creditors, and therefore should be granted in all respects.

**II. ALL SETTLEMENTS ENTERED INTO PURSUANT TO THE NOTICE AND SETTLEMENT PROCEDURES SHOULD BE APPROVED UNDER BANKRUPTCY CODE SECTION 105 AND BANKRUPTCY RULE 9019.**

36. As noted above, Bankruptcy Code section 105 provides in pertinent part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). In turn, Bankruptcy Rule 9019 provides that the Court "may approve a compromise or settlement." Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See In re Bond, 1994 U.S. App. Lexis 1282, \*9-\*14 (4th Cir. 1994) ("To minimize litigation and expedite the administration of a

bankruptcy estate, 'compromises are favored in bankruptcy'."); Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996). Various courts have endorsed the use of Bankruptcy Rule 9019. See, e.g., Bartel v. Bar Harbour Airways, Inc., 196 B.R. 268 (S.D.N.Y. 1996).

37. The standards by which a debtor should guide its decision whether to enter into a settlement and by which Court should evaluate a settlement are well established. In addition to considering the proposed terms of the settlement, the following factors are relevant:

- (a) the probability of success in litigation;
- (b) the difficulty in collecting any judgment that may be obtained;
- (c) the complexity of the litigation involved, and the expense inconvenience and delay necessarily attendant to it; and
- (d) the interest of creditors and stockholders and a proper deference to their reasonable views of the settlement.

See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-245 (1968); In re Frye, 216 B.R. 166, 174 (E.D. Va. 1997);

United States ex. Rel. Rahman v. Oncology Assoc., P.C., 269 B.R. 139, 152 (D. Md. 2001).

38. The decision to approve a settlement or compromise is within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. See TMT Trailer Ferry, 390 U.S. at 424-25. The settlement need not be the best that the debtor could have achieved, but need only fall "within the reasonable range of litigation possibilities." In re Telesphere Communications, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994). In making its determination, a court should not substitute its own judgment for that of the debtor and should defer to the debtor so long as there is a reasonable business justification. See In re Martin, 91 F.3d at 395; In re Jasmine, Ltd., 258 B.R. 119, 123 (D.N.J. 2000). The court should exercise its discretion "in light of the general public policy favoring settlements." In re Hibbard Brown & Co., Inc., 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); Nellis v. Shugrue, 165 B.R. 115, 23 (S.D.N.Y. 1994) ("the general rule [is] that

settlements are favored and, in fact, encouraged by the approval process outlined above").

39. Like all settlements proposed by the Debtors in these cases to date, the Debtors will evaluate any Settlements based on the foregoing standard and will only enter into a Settlement after giving due consideration to the factors set forth in TMT Trailer Ferry and other relevant cases. Specifically, the Debtors will consider: (i) the reasonableness the Settlement as a whole; (ii) the probability of success if the Settlement Claim(s) were to be litigated, arbitrated or otherwise resolved through disputed means; (iii) the complexity, expense and likely duration of any litigation, arbitration or dispute resolution process; (iv) the likelihood of collecting any judgment if the Debtors' proceeded with litigation; (v) the fairness of the Settlement with regards to the Debtors' estates, creditors, and other parties in interest; and (vi) other factors relevant in assessing the utility of a proposed Settlement. Only after giving due consideration to the foregoing will the Debtors enter into a Settlement Agreement.

40. In light of the foregoing, subject only to the Notice Procedures, the Debtors submit that all Settlements should be approved under Bankruptcy Code section 105 and Bankruptcy Rule 9019.

41. Courts, including those in this district, have granted similar relief to debtors in possession in other large and complex chapter 11 cases. See, e.g., In re LandAmerica Financial Group, Inc., et al., Case No. 08-35994 (KRH)(Bankr. E.D. Va. May 21, 2009) (granting Debtors' proposed tiered settlement and notice procedures); In re Frontier Airlines Holdings, Inc. et al., Case No. 08-11298 (RDD) (Bankr. S.D.N.Y.); In re Ampex Corporation, et al., Case No. 08-11094 (AJG) (Bankr. S.D.N.Y.); In re Adelphia Communications Corporation, et al., Case No. 02-41729 (REG) (Bankr. S.D.N.Y.); In re Worldcom, et al., Case No. 02-13533 (AJG) (Bankr. S.D.N.Y.).

#### **NOTICE**

42. Notice of this Motion has been provided to those parties entitled to notice under the Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local Bankruptcy Rules

2002-1 and 9013-1 Establishing Certain Notice, Case Management, and Administrative Procedures (D.I. 130; the "Case Management Order"). The Debtors submit that, under the circumstances, no other or further notice need be given.

**WAIVER OF MEMORANDUM OF LAW**

43. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Movants request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

**NO PRIOR REQUEST**

44. No previous request for the relief sought herein has been made to this Court or any other court.

**CONCLUSION**

WHEREFORE, the Debtors respectfully request that the Court enter the Settlement Procedures Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: July 16, 2009  
Richmond, Virginia

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Counsel to the Debtors and  
 Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	x	

**ORDER UNDER 11 U.S.C. §§ 105 AND 363, AND FED. R. BANKR.  
 P. 2002, 9006, AND 9019 AUTHORIZING THE ESTABLISHMENT OF  
 PROCEDURES TO SETTLE CERTAIN PRE-PETITION AND POST-  
 PETITION CLAIMS AND CAUSES OF ACTION WITHOUT FURTHER  
 COURT APPROVAL**

Upon the motion (the "Motion")<sup>1</sup> of the Debtors for entry of an order, pursuant to sections 105 and 363 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 9006 and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of an order authorizing the establishment of procedures to settle certain pre-petition and post-petition claims and causes of action without further court approval; and the Court having reviewed the Motion; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

**FOUND, DETERMINED, AND CONCLUDED that:**

1. Based on the affidavits of service filed, due, proper and adequate notice of the Motion has been given in accordance with the Case Management Order and that no other or further notice is necessary;

2. The Notice Procedures are fair, reasonable, and appropriate.

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<sup>1</sup> Each capitalized term not otherwise defined herein shall have the meaning ascribed to it in the Motion.

3. The Settlement Procedures are fair reasonable, and appropriate.

4. The Notice and Settlement Procedures were proposed in good faith.

5. Pursuant to Bankruptcy Rule 9006, cause exists to shorten the applicable notice period in Bankruptcy Rule 2002(a)(3) with respect to each Settlement.

6. Upon the expiration of the applicable Notice Period without an objection or upon resolution of any filed objection after the applicable Notice Period, each Settlement that complies with the Notice and Settlement Procedures shall be deemed (i) fair and reasonable and (ii) to have satisfied the standards under Bankruptcy Code sections 105 and 363 and Bankruptcy Rule 9019.

7. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

**ORDERED, ADJUDGED, AND DECREED that:**

8. The Motion is GRANTED.

9. The Debtors are authorized, but not directed, to compromise and settle Disputed Claims and Cause of Action and Receivable Claims in accordance with the Settlement Procedures.

10. The Debtors shall provide key parties in interest with notice of each proposed Settlement. The Notice Procedures are as follows:

(a) The Debtors shall give written notice, by email or facsimile, if available, or overnight courier if email or facsimile are not available, of each proposed Settlement (the "Settlement Notice") to (i) the United States Trustee, (ii) counsel for the Committee of Unsecured Creditors, (iii) any party to the Settlement, and (iv) the Core Group and 2002 List (collectively, the "Notice Parties").

(b) The Settlement Notice (or the Settlement Agreement) shall specify (i) the identity of the other party to the Settlement, (ii) a summary of the dispute with such other party, including a statement of the Debtors' reasonable estimate of the Settlement Claim amount and the basis for the controversy, (iii) an explanation of why the Settlement of such Settlement Claim is favorable to the Debtors, their estates, and their creditors, and (iv) a copy of the proposed settlement agreement ("Settlement Agreement").

(c) The Notice Parties may object to or request additional time to evaluate the proposed Settlement in writing by no later than 5:00 p.m. (ET) (i) five (5) days for

both Tier I Disputed Claims and Tier I Cause of Action and Receivable Claims or (ii) ten (10) days for both Tier II Disputed Claims and Tier II Cause of Action and Receivable Claims (each an individual "Notice Period") and serve such objection or request on counsel to the Debtors and counsel for the Creditors' Committee on or before the expiration of the applicable Notice. If the Debtors are compromising more than one Disputed Claim and/or Cause of Action and Receivable Claim, the Tier II Notice Period shall apply to such Settlement. If no objection or written request is filed and served upon counsel for the Debtors and counsel for the Creditors' Committee or counsel to the Debtors does not receive a written request for additional information and/or additional time prior to the expiration of the applicable Notice Period, the Debtors shall be authorized to enter into and consummate the Settlement Agreement without further order of the Court or any other action by the Debtors.

(d) If a Notice Party provides a written request to counsel for the Debtors for additional information or time to evaluate the proposed Settlement, only such Notice Party shall have the later of (i) an additional five (5) days to object to the proposed Settlement or (ii) in the case of a request for additional information, three days after receipt by the Notice Party of the additional information requested. Each Notice Party may only make one request for additional time per Settlement Agreement, unless otherwise agreed to by the Debtors in their sole discretion.

(e) If a Notice Party objects to the proposed Settlement within the defined Notice Period for that particular Tier of

Disputed Claim or Cause of Action and Receivable Claim, (or the additional period in the case of a Notice Party that has timely requested additional time or information to evaluate the proposed Settlement) (the "Objection Deadline") and the Debtors and such objecting Notice Party are unable to reach a consensual resolution, the Debtors will not take any further action to consummate the proposed settlement without first obtaining Court approval for that specific Settlement. The Debtors are authorized to schedule the Settlement for a hearing at the next scheduled omnibus hearing following the Objection Deadline (or any subsequent hearing) without filing a separate motion or other pleading.

(f) If the Objection Deadline has passed and no objection has been filed with the Court or request for additional time or information has been received by the Debtors, the Debtors are authorized, but not directed, to file a "Certificate of No Objection" with the Court; provided, further, that each such Certificate shall set forth a statement that no objection was filed or received (or if any objection was filed or received, such objection has been resolved) and no request for additional time or information was received or, if such request was received, the additional period of review has expired.

(g) An objection will be considered properly filed and served only if it is filed with the Court, and actually received by the following parties on or before the Objection Deadline: (i) Clerk of the Bankruptcy Court, United States Bankruptcy Court, 701 East Broad Street - Room 4000, Richmond, VA 23219, (ii) the attorneys for the Debtors, (a) Skadden, Arps, Slate, Meagher & Flom, LLP, One Rodney Square, P.O.

Box 636, Wilmington, DE 19899, Attn: Gregg M. Galardi ([gregg.galardi@skadden.com](mailto:gregg.galardi@skadden.com)) and Ian S. Fredericks ([ian.fredericks@skadden.com](mailto:ian.fredericks@skadden.com)) and (b) McGuireWoods LLP, One James Center, 901 E. Cary Street, Richmond, VA 23219, Attn: Douglas M. Foley ([dfoley@mcguirewoods.com](mailto:dfoley@mcguirewoods.com)) and Daniel F. Blanks ([dblanks@mcguirewoods.com](mailto:dblanks@mcguirewoods.com)), and (iii)(a) Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 11th Floor, Los Angeles, California 90067-4100, Attn: Jeff Pomerantz ([jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)) and (b) 780 Third Avenue, 36th Floor, New York, NY 10017-2024, Attn: Robert Feinstein ([rfeinstein@pszjlaw.com](mailto:rfeinstein@pszjlaw.com)).

(h) All time periods set forth in the Notice Procedures shall be calculated in accordance with Bankruptcy Rule 9006.

11. Subject to the Notice Procedures, the Debtors are authorized to compromise and settle Disputed Claims as follows:

(a) Tier I With respect to Disputed Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with the Claimants that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Disputed Claims, grant any Claimant an allowed claim of an agreed upon priority or administrative expense claim, as applicable, in an amount not to exceed \$500,000.

(b) Tier II With respect to Disputed Claims, the Debtors, in their sole discretion, may negotiate, execute and

consummate written Settlement Agreements with the Claimants that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Disputed Claims, grant any Claimant an allowed claim (priority or non-priority, as the case may be) or administrative expense claim, as applicable, in an amount greater than \$500,000.

12. Subject to the Notice Procedures, the Debtors are authorized to compromise and settle Cause of Action and Receivable Claims as follows:

(a) Tier I With respect to pre- and post-petition Cause of Action and Receivable Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with third parties that will be binding on the Debtors and their estates without further action by this Court. The Debtors may, in full settlement of such Cause of Action and Receivable Claims, compromise or settle a Cause of Action and Receivable Claim resulting in a cash payment to the Debtors' estates of a value (i) equal to or greater than seventy-five percent (75%) of the Debtors' original reasonable estimate of the Cause of Action and Receivable Claim amount and (ii) equal to or less than \$1,000,000.

(b) Tier II With respect to pre- and post-petition Cause of Action and Receivable Claims, the Debtors, in their sole discretion, may negotiate, execute and consummate written Settlement Agreements with third parties that will be binding on the Debtors and their estates without

further action by this Court. The Debtors may, in full settlement of such Cause of Action and Receivable Claims, compromise or settle a Cause of Action and Receivable Claim resulting in a cash payment to the Debtors' estates of a value equal to (i) more than \$1,000,000 or (ii) less than seventy-five percent (75%) of the Debtors' original reasonable estimate of the Cause of Action and Receivable Claim amount.

13. To memorialize the Settlements, the Debtors are authorized in their sole discretion, but not directed, to enter into Settlement Agreements substantially in the form of Exhibit A attached hereto; provided, further, that the material terms of each Settlement Agreement may vary depending upon the specific facts and circumstances of each Settlement and nothing herein or therein shall be construed as impairing the Debtors' ability to tailor the form of the Settlement Agreement to each specific Settlement.

14. The Debtors are authorized, but not directed, to resolve all of the Disputed Claims and Cause of Action and Receivable Claims of a single party in a single Settlement Agreement.

15. The Debtors shall provide written notice to Kurtzman Carson Consultants LLC ("KCC"), the Debtors'

authorized claims and noticing agent, with respect to any proof of claim settled pursuant to these Settlement Procedures; provided, further, that, if applicable, KCC is authorized and directed to amend the claims register accordingly without further order of the Court.

16. Following entry of this Order, unless otherwise agreed to between the Debtors and the Creditors' Committee, the Debtors' advisors shall provide weekly updates concerning ongoing settlement discussions to the Creditors' Committee's advisors. These updates shall include, without limitation, non-privileged information mutually agreed to among the parties' advisors. Once the Debtors reach an agreement in principle with a third party, the Debtors shall share the material terms of the Settlement with the Creditors' Committee's advisors. All information shared with the Creditors' Committee's advisors shall be deemed shared subject to the existing confidentiality agreement with the Debtors.

17. Assuming no objection has been filed by the applicable Objection Deadline, immediately after the expiration of the Notice Period (or, in the case of a

filed objection that has been resolved, upon filing of a Certificate of No Objection) the Settlement Agreement shall be deemed to be a final order of this Court for all purposes, including for purposes of any appeal.

18. In the event there is an inconsistency between the Motion and this Order, this Order shall control.

19. The requirement under Local Rule 9013-1(G) of the Local Rules for the United States Bankruptcy Court for the Eastern District of Virginia to file a memorandum of law in connection with the Motion is hereby waived.

20. This Court retains jurisdiction to hear and determine all matters arising from or related to the Motion, this Order or any Settlement.

Dated: Richmond, Virginia  
July \_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Gregg M. Galardi, Esq.  
Ian S. Fredericks, Esq.  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP  
One Rodney Square  
PO Box 636  
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- and -

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- and -

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Douglas M. Foley (VSB No. 34364)  
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One James Center  
901 E. Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Counsel to the Debtors  
and Debtors in Possession

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley

Douglas M. Foley

**EXHIBIT A**

**(Disputed Claim Settlement and Cause of Action and  
Receivable Claim Settlement Agreement)**

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IN THE UNITED STATES BANKRUPTCY COURT  
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- - - - - X  
In re: : Chapter 11  
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CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
:  
Debtors. : Jointly Administered  
- - - - - X

**SETTLEMENT AGREEMENT AND STIPULATION BY AND AMONG THE  
DEBTORS AND [THE CLAIMANT] RESOLVING [INSERT DESCRIPTION  
OF DISPUTED CLAIM(S) OR CAUSES OF ACTION AND RECEIVABLE  
CLAIM(S)]**

This settlement agreement and stipulation  
(this "Agreement") is entered into by and among the  
above-captioned debtors and debtors in possession (the  
"Debtors"), on the one hand, and [\_] (the "Claimant" and

together with the Debtors, the "Parties" and each of which is a "Party"), on the other hand.

#### **GENERAL BACKGROUND**

WHEREAS, on November 10, 2008 (the "Petition Date"), the Debtors each filed a voluntary petition in the United States Bankruptcy Court for the Eastern District of Virginia (the "Court") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"); and

WHEREAS, the Debtors have continued as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, on November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee").

WHEREAS, to date, no trustee or examiner has been appointed in these chapter 11 cases.

WHEREAS, on January 16, 2009, the Court authorized the Debtors, among other things, to conduct going out of business sales at the Debtors' remaining 567 stores pursuant to an agency agreement (the "Agency

Agreement") between the Debtors and a joint venture, as agent (the "Agent"). On January 17, 2009, the Agent commenced going out of business sales pursuant to the Agency Agreement at the Debtors remaining stores. As of on or about March 8, 2009, the going out of business sales concluded.

WHEREAS, the Debtors are authorized under the Court's [ ] dated [ ], 2009 (D.I. [ ]; the "Settlement Procedures Order")<sup>1</sup> to enter into this Agreement, subject to the Notice Procedures; and

#### **SETTLEMENT BACKGROUND**

WHEREAS, [ ]

WHEREAS, the parties wish to resolve the [ ] in its entirety by this Agreement;

NOW THEREFORE, subject to and in accordance with the Settlement Procedures Order, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereby STIPULATE AND AGREE AND IT IS HEREBY ORDERED that:

1. [TERMS OF SETTLEMENT].

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Procedures Order.

2. Nothing contained herein shall be deemed an admission of liability on the part of the Debtors or [ ] with respect to the Settlement Claim.

3. Neither this Agreement, nor any statement made or action taken in connection with the negotiation of this Agreement, shall be offered or received in evidence or in any way referred to in any legal action or administrative proceeding among or between the parties hereto, other than as may be necessary (a) to obtain approval of and to enforce this Settlement Agreement or (b) to seek damages or injunctive relief in connection therewith.

4. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary or appropriate in conjunction with the performance of their respective obligations hereunder.

5. No provision of this Settlement Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any person

other than the parties hereto and their respective successors.

6. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Virginia without regard to any choice of law provisions.

7. This Agreement may be signed in counterpart originals and delivered by facsimile or email, which, when fully executed, shall constitute a single original.

8. This Agreement constitutes the entire agreement and understanding of the parties regarding the Agreement and the subject matter thereof.

9. The United States Bankruptcy Court for the Eastern District of Virginia shall retain exclusive jurisdiction (and the parties consent to such retention of jurisdiction) with respect to any disputes arising from or related to, or other actions to interpret, administer or enforce the terms and provisions of, this Agreement.

10. Each person or entity who executes this Settlement Agreement on behalf of another person or

entity represents and warrants that he, she, or it is duly authorized to execute this Agreement on behalf of such person or entity, has the requisite authority to bind such person or entity, and such person or entity has full knowledge of and has consented to this Agreement. The representations and warrantys set forth in this paragraph shall survive execution of this Agreement.

11. This Agreement is effective upon the later of (i) execution by both parties and (ii) the expiration of the applicable Notice Period.

12. This Agreement shall not be modified, altered, amended or vacated without the written consent of all parties hereto or order of the Bankruptcy Court.

IN WITNESS WHEREOF, this Agreement is hereby  
executed as of the later of the dates set forth below.

ACCEPTED AND AGREED TO BY:

Dated: [Date]

Dated: [Date]

By: \_\_\_\_\_  
[CLAIMANT]  
[Address]  
[Address]  
[Address]

By: \_\_\_\_\_  
[DEBTOR]  
[Address]  
[Address]  
[Address]